

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JODY F. BROWN</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,007,273
<b>CITY OF EDGERTON</b>	)	
Respondent	)	
AND	)	
	)	
<b>KANSAS MUNICIPAL INSURANCE TRUST</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requested review of the April 21, 2004 Award entered by Administrative Law Judge (ALJ) Steven J. Howard. The Appeals Board (Board) heard oral argument on October 12, 2004.

**APPEARANCES**

John G. O'Connor of Kansas City, Kansas, appeared for claimant. Jeffrey K. Brewer of Wichita, Kansas, appeared for respondent and its insurance carrier (respondent).

**RECORD AND STIPULATIONS**

The Board has considered the record and adopts the stipulations listed in the Award.

**ISSUES**

An accidental fall sustained on June 1, 2002 while claimant was building a band stage in Edgerton, Kansas formed the basis of the current claim. Due to the fact that the City of Edgerton had neither control over the claimant's activities nor direction over the claimant's work, the ALJ determined claimant could not be considered an employee nor a statutory employee of the city. The ALJ concluded that the injury to the claimant's left leg was not work-related, and claimant was denied an award.

Claimant argues that the Edgerton Frontier Days Association was an instrumentality of the City of Edgerton. Therefore, according to the claimant, he was in the service of the City of Edgerton under an implied contract of service. The claimant further contends that, under K.S.A. 44-508(b), a person in the service of a city or an instrumentality thereof is a "workman" for the purposes of that statute, without the necessity of the filing of a volunteer election, and that such a person is therefore covered by the Act.

Conversely, respondent contends claimant was not an employee of the respondent by virtue of his being a volunteer and, therefore, benefits were properly denied. Additionally, respondent denies claimant was a covered volunteer since no election had been filed to extend coverage to volunteers performing work such as what claimant was performing at the time of the accident.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant was a volunteer for the Frontier Days Association on the date of his accident and had participated in this event for approximately ten years. Frontier Days Association is a corporation that supports Frontier Days, a community event. The event usually runs from Thursday through Saturday. Claimant testified that he was not required to work any set hours and that he never reported to anyone in the city. He worked an average of five to ten hours per week during the weeks leading up to the event and worked 40 hours during the week of the event. But claimant acknowledged he could walk away from the work at any time.

Claimant testified that on June 1, 2002, he was building a stage for the band. While carrying a beam up a ladder, and after getting to the top of the post, the braces broke and he fell approximately 10 feet to the stage, landing on his left leg. This caused the knee to bend the wrong way injuring the ligaments in his knee. Eventually, surgery was performed.

At the time of claimant's injury he was self-employed with his father in a business that installed septic systems. He had no medical insurance coverage.

The City of Edgerton and Frontier Days Association were separate corporate entities on the date of claimant's accident. Although the city did provide equipment and the use of their grounds and facilities, all donations made by the City of Edgerton were voted upon by the city council. Other businesses and individuals donated time and money to the Frontier Days Association as well, including the City of Gardner.

Claimant has never been a paid employee of the City of Edgerton. And claimant testified he was not under any contract of employment with the City of Edgerton at the time of his injury. Frontier Days was coordinated through the Frontier Days Association and it was responsible for all volunteers. Volunteers for the Association included non-city employees. All monies obtained or generated were deposited into the account of the

Frontier Days Association. Licenses were held in the name of the Frontier Days Association.

K.S.A. 44-508(b) defines "Workman" or "employee" or "worker" as any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. . . volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers. . . and persons performing community service work, but only to the extent and during such periods as they are performing community service work and if an election has been filed an election to extend coverage to such person.<sup>1</sup>

The facts do not support a finding of any implied contractual relationship between volunteers of the Frontier Days Association and the City of Edgerton. Claimant volunteered his time for the Frontier Days Association, a legal entity separate from the City of Edgerton. The Frontier Days Association was wholly responsible for organizing and putting on the Frontier Days event. The Association's requesting and seeking of donations from the City of Edgerton, other cities and municipalities, and other public and private entities creates neither an implied contract of service between the City of Edgerton and the Frontier Days Association nor a "master/servant" relationship between the City of Edgerton and the claimant. Hence, the claimant was not covered under the Act as an employee on the date of the accident. Also, claimant was not covered as a volunteer because no election was filed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated April 21, 2004, entered by Administrative Law Judge Steven J. Howard is hereby affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 2004.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

---

<sup>1</sup> K.S.A. 44-508(b).

c:     John G. O'Connor, Attorney for Claimant  
       Jeffrey R. Brewer, Attorney for Respondent and Kansas Municipal Ins. Trust  
       Steven J. Howard, Administrative Law Judge  
       Paula S. Greathouse, Workers Compensation Director